

(1995) 11 PAT CK 0003
In the Patna High Court
Case No : C.W.J.C No. 2671 of 1995 (R)

Conveyor and Ropeway Services

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-11-1995

Acts Referred:

Citation : (1995) 11 PAT CK 0003

Judgement

N. Pandey and S.K. Chattopadhyaya, JJ.—This writ application has been filed for quashing the orders of assessment, passed by the Commercial Tax Officer, Urban Circle, Dhanbad for the period 1984-85 to 1991-92, as contained in Annexure-4 series.

2. The case of the petitioners is that as per the terms of agreement, the goods were sent to respondent Nos. 4 and 5 from outside Bihar. It is alleged that the assessing authority without assigning any reason, rejected the claim of the petitioners and held that such sale be deemed to have taken place at Dhanbad. Therefore, a declaration has been sought that the addition to sale, which took place in the course of inter-State trade in Gross Turn Over of the petitioners was improper and without jurisdiction. Accordingly, orders of assessment passed by respondent No. 3 after such addition was illegal.

3. It is claimed that sales tax payable on such goods was already paid at Calcutta and, accordingly, "C" Certificate was also produced. But inspite of that the assessing authority has held that sale to respondents 4 and 5 was not inter-State but intra-State.

4. Learned Counsel appearing for the State raised a preliminary objection with regard to maintainability of the present writ application. It was contended that in view of specific provision of appeal and revision, the petitioners can not be permitted to file the writ petition without availing those remedies.

5. There is no dispute that against the impugned order, an appeal would lie before appropriate authority under the provisions of Section 45 of the Bihar

Finance Act (in short "the Act") From the statement made in paragraph No. 30 of the writ application also it appears that the petitioners had already filed different appeals against the impugned orders before the appellate authority. But according to them, in order to maintain those appeals, they were required to deposit 20 per cent of the amount of the tax assessed in each appeal. But as the petitioners could not arrange such huge amount because of the financial position, all the appeals were withdrawn.

6. It further appears that after withdrawal of the appeals, the petitioners filed revision applications under the provisions of Section 46(4) of the Act before the Commissioner to invoke his suo motu power to call for and examine the records of the proceedings. But it appears from the statement in paragraph No. 34 and 35 of the writ application that revision applications were held not to be maintainable and, therefore, rejected.

7. But we must indicate that neither any order showing withdrawal of appeals nor any order rejecting the revision applications were produced before us. Question, thus, arises whether in the background of the facts, noticed above, this Court should exercise its writ jurisdiction, when there was equal efficacious and adequate statutory remedy available to the petitioners against the impugned orders.

8. Learned Counsel appearing on behalf of the petitioners contended that the order of Commercial Tax Officer, Dhanbad, to recover tax with respect to the sale, which had taken place at Calcutta, is wholly without any authority of law and, therefore, infringes their fundamental right, guaranteed under Article 19(1) (g) of the Constitution.

9. It was next contended that in the background of the facts of this case, although against the impugned orders there was a provision for appeal, but that can not prevent the petitioners from approaching this Court under Article 226 in order to safeguard their fundamental right. In support of such contention reliance was placed to a decision of the Supreme Court in the case of Tata Iron and Steel Co., Limited, Bombay Vs. S.R. Sarkar and Others, .

10. In our view, there can not be any dispute with regard to the proposition, as laid down by the Supreme Court in the above-mentioned case. If an assessing authority had no jurisdiction in law or a particular statute had no application to the transactions, naturally aggrieved person can invoke the jurisdiction of the Court under Article 226 of the Constitution even without availing the remedy of appeal etc.

11. But the question before us is not so simple. Because in order to arrive at a conclusion whether the sale in question was inter-State or intra-State, one will have to go through several facts, including the terms and conditions of agreement etc. Therefore, it would be completely beyond the scope of Article 226 to examine such disputed facts and weigh the evidence of the parties at the first instance.

12. That apart, the petitioners had themselves preferred appeals before the appellate authority under the provisions of Section 45 of the Act. Their plea is that since sufficient money was not available to deposit at the rate of 20 per cent of the tax assessed, the appeals were withdrawn. In our view, if on such plea writ applications are entertained ignoring statutory provisions of appeal and revision etc., probably in no case an assessee would prefer to go to the appellate authority and, thus, the provisions of Section 45 will have to be held redundant for all practical purposes.

13. For the reasons, stated above, we are inclined to hold that the remedy of Appeal u/s 45 of the Act is quite adequate and efficacious and, thus, no writ application would be maintainable unless such remedy is exhausted by the aggrieved party. In support of our view reliance can be placed to the cases of *Tata Iron and Steel Co. Ltd. Vs. State of Bihar and Others*, and *Sita Ram Thakur Vs. Nandu Jha and Others*, .

14. It was next contended, in case the writ application is held not to be maintainable, the Commissioner of Commercial Tax (respondent) be directed to recall the orders, dismissing the revision applications on the ground of maintainability. It is stated that in the case of *Rakesh Kumar and Ors. State of Bihar and Ors. (HC) 1995 (2) All P.L.R. 702*, this Court has already held that the suo motu power of revision under Sub-section (4) of Section 46 of the Act can be invoked by the Commissioner even if the irregularities and illegalities are brought to its notice by the assessee. It would further appear that this Court having noticed that in several such cases Commissioner had passed similar orders, directed that in all such cases if the assessee approaches, then the Commissioner would do well in recalling its earlier orders and dispose of the matter in the light of observation, made in that case.

15. In normal course, having perused the judgment of the aforementioned case we could have directed the Commissioner to examine the cases of the petitioners in the same manner. But as noticed above, no order of the Commissioner had been produced before us to show that revision applications were dismissed as not maintainable. That apart, while exercising suo tnotu power, at the request of the petitioners it would be open to the Commissioner to refuse to invoke his jurisdiction on the ground that the assessee had not exhausted remedies of appeal available to them under the statute. Therefore, it absence of all the relevant materials on the record, it would be difficult for this Court to issue any positive direction to the Commissioner or the appellate authority. But, however, it will be open to the petitioners to invoke the alternative remedy of appeal and revision before the concerned authority in accordance with law. It is also clarified that this order will not cause prejudice to the case of the petitioners before the appellate or revisional authority at any stage.

16. In the result, this writ application is, thus, held not maintainable since the petitioners had adequate and efficacious remedy of appeal and revision against the impugned orders under the Act.

17. With the aforesaid observations, this writ application is, thus, disposed of. Writ Application decided accordingly.